

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MIANYANG BOE OPTOELECTRONICS TECHNOLOGY CO., LTD.; WUHAN
CHINA STAR OPTOELECTRONICS SEMICONDUCTOR DISPLAY
TECHNOLOGY CO., LTD.; TIANMA MICROELECTRONICS CO. LTD.; AND
VISIONOX TECHNOLOGY, INC.
Petitioner,

v.

SAMSUNG DISPLAY CO., LTD.
Patent Owner.

Case No. IPR2023-00941
U.S. Patent No. 7,414,599

PETITIONER'S MOTION TO STRIKE

Pursuant to 37 C.F.R. §§ 42.5(a), 42.7(a), 42.20(a) and the Board's authorization via an email dated April 16, 2024, Petitioner moves to strike the portions of Patent Owner's Response (Paper 33, "Response") that improperly incorporate arguments from Exhibits 2018, 2047, and 2051-2052 by reference in contravention of 37 C.F.R. § 42.6(a)(3) and numerous related decisions.

Patent Owner points to these exhibits to argue purported "secondary considerations" of non-obviousness. Patent Owner alleges that these exhibits show (1) a certain Samsung product "practices" the subject matter claimed by the '599 patent at issue, (2) Petitioner BOE "copied" a Samsung product, and (3) certain third-party products "infringe" the '599 patent claims. But, Patent Owner merely provides (at best) terse, conclusory assertions in its Response (and expert declaration) and attempts to explain the basis for these arguments only in the cited exhibits themselves. This is shown in the quoted passages from Patent Owner's Response:

Response at 54-55: For example, the AMOLED display used in the Samsung Galaxy S21 product practices all challenged claims of the '599 Patent. Ex. 2008, ¶¶136–143; Ex. 2018 (Galaxy S21 Claim Chart). ... [protected information omitted] Dr. Wolfe explains that this pixel circuit for the Galaxy S21 product includes:

- *[Preamble]/[1a]*: "a pixel circuit in an organic light emitting device, comprising a first transistor for delivering a data signal voltage...,” *i.e.*, transistor T2;

...

- *[1g]*: an electroluminescent element that “emits light corresponding to the driving current generated through the second transistor,” *i.e.*, OLED.

See Ex. 2008, ¶137 (discussing Ex. 2018 (chart mapping claims 1–18 to Galaxy S21 Display)).

Response at 59-60: The pixel circuit in Mianyang BOE’s AMOLED display for the iPhone 12 is a replica of Samsung Display’s patented pixel circuit (*see* Ex. 2047 at ¶¶31–50), as illustrated below in the side-by-side annotated comparison of teardown images of pixel circuits in a Samsung Display AMOLED display (Galaxy S21) (Ex. 2020 at 5) and a Mianyang BOE AMOLED display (iPhone 12) (Ex. 2047 at ¶35). (images omitted).

Response at 60-61: AMOLED displays sold by numerous vendors of replacement AMOLED displays ... infringe the challenged claims (*see, e.g.*, Ex. 2051 (chart mapping claims 1-18 to Sourcely Plus AMOLED Display); Ex. 2052 (chart mapping claims 1-18 to Injured Gadgets AMOLED Display)).

The passages above constitute improper incorporations by reference that are contrary to the Board’s rules and should be struck. While Petitioner bears the ultimate burden to establish that the ’599 patent’s claims are unpatentable, it is Patent

Owner who must in the first instance offer argument and evidence of any purported secondary considerations of non-obviousness. *Bos. Sci. SciMed, Inc. v. Iancu*, 811 F. App'x 618, 623 (Fed. Cir. 2020). And to the extent Patent Owner alleges—in its effort to satisfy this burden—that its own products “practice” the ’599 patent, or that others purportedly engaged in “cop[ying]” its product or “infringed” the patent’s claims, it was required to provide explanations in the body of its Response. It cannot do so merely in separate exhibits.

The Board’s rules unambiguously explain that “[a]rguments must not be incorporated by reference from one document into another document.” 37 CFR 42.6(a)(3); *see also Cisco Sys., Inc. v. C-Cation Techs., LLC*, Case IPR2014-00454, Paper 12, at 10 (P.T.A.B. Aug. 29, 2014) (Informative). This “prohibition ... eliminate[s] abuses that rise from incorporation and combination.” *Parus Holdings, Inc. v. Google LLC*, 70 F.4th 1365, 1372 (Fed. Cir. 2023). Among other things, an improper “incorporation by reference” both operates as “self-help increase in the length of the brief” and results in a “pointless imposition” on the Board’s time by forcing it to dig through the record to determine what is actually being argued. *Id.*

This is what occurred here. Patent Owner’s response brief is just 4 words short of the 14,000-word limit. *See* Response at 67 (shown as page 1 in footer). In comparison, the four exhibits at issue total 330 pages, 250 of which comprise single-spaced, highly technical claim charts. By shifting its argument out of the Response

and into exhibits, Patent Owner improperly provided itself with “self-help.” It was able to jam more arguments (albeit poorly supported ones) into its response and avoided the need to make choices regarding what arguments to include or exclude. Moreover, by not fleshing out its arguments in the body of its Response, Patent Owner forces the Board—and Petitioner—to dig through its various lengthy exhibits to determine the totality of what it is arguing. *Gen. Access Sols., Ltd. v. Sprint Spectrum L.P.*, 811 F. App’x 654, 658 (Fed. Cir. 2020) (“This exercise of ‘playing archaeologist with the record’ is precisely what the rule against incorporation by reference was intended to prevent, 77 Fed. Reg. 48,617, and the Board was within its discretion in excluding the arguments made in the claim chart.”).

Both the Board and the Federal Circuit have specifically rejected attempts to incorporate claim charts and other lengthy documents that are no different from what Patent Owner has done here. For example, in one case the Board rejected an attempt to show that certain claim limitations were satisfied by the prior art by making only short, declarative statements in the petition itself while citing to exhibits spanning “nearly five pages, four pages of which is a claim chart.” *Cisco Sys.*, Case IPR2014-00454, Paper 12, at 8. Similarly, in another case, the Federal Circuit agreed that a Patent Owner violated the incorporation by reference rules when citing hundreds of pages of exhibits—including claim charts—in an effort to establish an earlier date of conception. *See Parus Holdings*, 70 F.4th at 1369.

Again, this is precisely what Patent Owner does here. Rather than explaining why the “Samsung Galaxy S21 product practices all challenged claims” in its Response, it simply says so with short, declarative statements and points to Exhibit 2018 (a 86-page claim chart) for the supporting argument. *See* Response at 54-55. Similarly, rather than laying out whatever facts it purports show that BOE copied Samsung Display’s pixel circuits” in its Response, Patent Owner simply declares that this is the case and relies on its 80-page self-serving district court complaint (Exhibit 2047) to sustain the allegation. *Id.* at 59-60. And rather than articulating in its Response why certain third-party displays purportedly “infringe the challenged claims,” Patent Owner makes a bald allegation in its Response and then points to Exhibits 2051 and 2052 (both 82-page claim charts) for the actual explanation. *Id.* at 60. By improperly incorporating these exhibits after its failed attempt seeking discovery of over 5,000 pages of documents (Paper 30), Patent Owner again seeks to distract the Board and parties from the substantive merits of a single-reference obviousness ground by bloating an otherwise streamlined record with satellite litigation over baseless secondary-consideration allegations.

In sum, and for the reasons explained, the Patent Owner Response passages quoted above constitute improper incorporations by reference. Thus, Petitioner requests that they be struck.

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

Dated: April 23, 2024

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CERTIFICATE OF SERVICE

The undersigned certifies that on April 23, 2024, the foregoing paper was served in its entirety via electronic mail, upon the following attorneys of record for the Patent Owner:

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